

succession certificate. But we also think that the plaintiff should have an opportunity, if so advised, of producing such certificate. Accordingly we shall defer passing a decree in this appeal for a period of two months so as to give an opportunity to the plaintiff of obtaining the necessary certificate. We accordingly adjourn the hearing of this appeal for two months.

1908

ABDUL
KARIM
KHAN
v.
MAQBUL-UN-
NISSA
BEGAM.

Before Mr. Justice Sir William Burdett and Mr. Justice Aikman.

SAMIN HASAN (PLAINTIFF) v. PIRAN (DEFENDANT).*

Civil Procedure Code, sections 574 and 551—Procedure—Appeal summarily dismissed—Court not bound to record a full judgment.

Held that the provisions of section 574 of the Code of Civil Procedure are not applicable in their entirety to the case of an appeal dismissed under section 551 of the Code. *Rami Deka v. Brojo Nath Saikia* (1) dissented from.

THIS was a suit to recover damages for malicious prosecution. The defendant pleaded that the complaint which he had lodged in the Criminal Court was true. The Court of first instance (Subordinate Judge of Moradabad) dismissed the suit, finding that the plaintiff had failed to show that the complaint was groundless. The plaintiff appealed. The lower appellate Court (District Judge of Moradabad) sent for the record and fixed a date under section 551 of the Code of Civil Procedure. Upon that date the Court passed the following order:—"It is admitted that there was, and is, very strong enmity between the parties, and it is just as likely that the appellant had the respondent's house set on fire as that the fire was accidental. The learned Subordinate Judge was right in dismissing the suit. The appeal is summarily dismissed."

The plaintiff appealed to the High Court on the sole ground that the judgment of the Court below was not in compliance with the provisions of section 574 of the Code of Civil Procedure.

Dr. Tej Bahadur Sapru, for the appellant.

The respondent was not represented.

* Second Appeal No. 336 of 1907 from a decree of D. R. Lyle, District Judge of Moradabad, dated the 12th of December 1906, confirming a decree of Maula Bakhsh, Subordinate Judge of Moradabad, dated the 25th of October 1906.

1908

SAMIN
HASAN
v.
PIBAN.

BURKITT and AIKMAN, JJ.—The appellant brought a suit against the respondent claiming damages for malicious prosecution. The defendant pleaded that the complaint which he had lodged in the Criminal Court was true. The Court of first instance dismissed the suit finding that the plaintiff had failed to show that the complaint was groundless. The plaintiff appealed. The learned District Judge sent for the record, and, after hearing the appellant's pleader, dismissed the appeal summarily under section 551 of the Code of Civil Procedure, giving brief reasons for doing so and coming to the conclusion that the learned Subordinate Judge was right in dismissing the suit. The plaintiff comes here in second appeal.

It is urged that the judgment of the lower appellate Court does not comply with the requirements of section 574 of the Code. The learned advocate for the appellant relies on the decision of the Calcutta High Court in *Rami Deka v. Brojo Nath Saikia* (1) as an authority for holding that the provisions of section 574 of the Code apply to a judgment dismissing an appeal under section 551. With all deference to the learned Judges who decided that case, we are not prepared to hold that the provisions of section 574 are applicable in their entirety to the case of an appeal dismissed under section 551. We think this is evident from the immediately preceding sections, and in particular section 571. In the present case it appears that the learned Judge had the record before him and heard the appellant's pleader. There is nothing to show that he did not apply his mind to the facts of the case and the grounds taken before him. We dismiss the appeal, but without costs, as the respondent is not represented.

Appeal dismissed.

(1) (1897) I. L. R., 25 Calc., 97.